

OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 19, 1974

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer

(See attached list.)

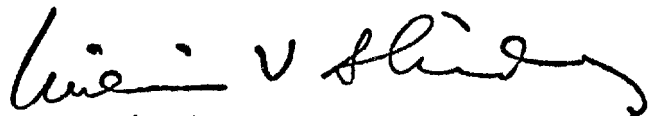
Subject: Draft alternative language to H.R. 12206

Attached is the latest version of the draft alternative to H.R. 12206. Earlier versions were transmitted to you on May 20 and June 12. We appreciate the many constructive comments which have been provided and believe that, with relatively few exceptions, we have been able to satisfy the concerns which were expressed.

Since the House Subcommittee on Foreign Operations and Government Information is proceeding with its mark-up of H.R. 12206 and related bills, OMB staff and the Executive Director for the Domestic Council Committee on the Right of Privacy believe that it is essential that we share the results of our efforts to date with the Subcommittee while there is still time. We are therefore planning to provide alternative language to the Subcommittee within the next day or so. In making the draft bill available we will identify those questions on exemptions where we have not reached complete agreement, and urge the Subcommittee to seek the views of the agencies concerned.

We expect that there will be further opportunities to supplement our views as the bill proceeds and would appreciate any further comments or suggestions at the earliest possible time.

Telephone comments or suggestions may be directed to Walter Haase (395-4745) or Franklin Reeder (395-4814). We would also appreciate it if those agencies which have not already done so would submit the lists of system and cost estimates requested in our May 20 letter. Agency testimony or reports should be cleared through usual legislative clearance channels.



William V. Skidmore for
Assistant Director for
Legislative Reference

Attachment

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DRAFT
June 18, 1974

A BILL

To amend title 5, United States Code, to provide that individuals be apprised of records concerning them which are maintained by government agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That title 5, United States Code, is amended by adding at the end of section 552 thereof the following new section:

"552a Records about individuals

"(a) For the purpose of this section---

"(1) 'Record' means a collection or grouping of data preserved for future reference or use;

"(2) 'System of records' means any organized collection or grouping of records maintained by an agency whether or not stored in a computer; and

"(3) 'Statistical reporting or research record' means a record in a system of records assembled or maintained for analytic purposes that do not entail use or disclosure of any record pertaining to an individual, or information contained therein, in making any determination about that individual except as provided in section 8 of title 13.

"(b) Each agency that maintains a system of records pertaining to identifiable individuals which are indexed, or from which information could be retrieved, by the name of the individual

or by some identifying number or symbol assigned to each individual, shall with respect to such systems of records--

"(1) publish, at least annually in the Federal Register, a notice or notices of the existence and character of all such systems of records. The notices shall include but need not be limited to:

"(A) the name of the system;

"(B) the nature and purposes of the system;

"(C) the categories and approximate number of individuals on whom records are maintained;

"(D) the categories of information maintained;

"(E) the policies and practices of the agency regarding storage, retention, and disposal of the records;

"(F) a description of the purposes for which all or any part of the information pertaining to identifiable individuals contained in the records is used or is intended to be used including the categories of users for each purpose;

"(G) the title and address of the officer responsible for the system; and

"(H) the procedures whereby an individual can be informed if the system contains a record pertaining to him, gain access to such record, and contest its content;

"(2) maintain procedures whereby an individual from whom information about himself is being requested is apprised of the purposes for which that information will be used

and the effects for him, if any, of not providing all or any of the requested information;

"(3) refrain from disclosing any such records, or information contained therein, to a person not employed by the agency or to another agency, except--

"(A) pursuant to a request by or with the consent of the individual to whom the information in the record pertains, or

"(B) when expressly required by law, or

"(C) for a use that is clearly within the stated purposes of the system as described in a notice pursuant to paragraph (1) of this subsection published at least ninety days prior to such use, or

"(D) upon good cause for the disclosure and when not otherwise prohibited by law, with notification of the individual to whom the record pertains at his last known address prior to such disclosure, or

"(E) to another agency for a law enforcement purpose authorized by law, provided that the head of such other agency, or his designee, shall have made a written request specifying the particular information desired and the law enforcement purpose for which the information is sought; or

"(F) where the agency determines that the recipient has provided adequate assurance that the record, or

information contained therein, will be used as a statistical reporting or research record;

"(4) maintain an accurate accounting of the date, nature, and purpose of each disclosure of information which is contained in any such record made to any person outside the agency, or to another agency, including the name and address of the person or agency to whom disclosure was made, and retain such accounting for a minimum of two years after such disclosure, except that no such accounting need be maintained for any disclosure of information from records which by law or regulation are open to public inspection or copying;

"(5) refrain from disclosing any such record, or information contained therein, within the agency other than to officers or employees who have a need to know in the performance of their duties for the agency, except in the case of records which by law or regulation are open to public inspection;

"(6) ensure that information about an identifiable individual which is used in making a determination about that individual is as accurate, timely and complete as is reasonably necessary to assure fairness in that determination;

"(7) permit an individual to inspect the information pertaining to him in his record and to have a copy made of all or any portion thereof;

"(8) permit an individual to request amendment of a record pertaining to him and either

"(A) make any correction of information which the individual believes is not accurate, timely, or complete; or

"(B) inform the individual of its refusal to amend a record in accordance with his request, the reason therefor, the procedures established by the agency for the individual to request a review of that refusal and the name and address of the higher authority to whom the request for review may be taken;

"(9) permit an individual who disagrees with the agency's refusal to amend his record to request review by a higher authority within the agency and, if after such a review, that higher authority also refuses to amend his record, permit the individual to file a statement setting forth the nature of his disagreement;

"(10) in any subsequent disclosure containing information that is disputed by the individual, clearly note that it is disputed and provide copies of the statement to persons or other agencies to whom the disputed information has been disclosed upon their request;

"(11) inform any person or other agency about any significant correction or deletion made by the agency of any information that has been disclosed to such person or agency within one year preceding the making of such correction or deletion.

"(c) The provisions of the section shall not apply to any system of records--

"(1) maintained by an executive agency to the extent that the head of that executive agency determines that the disclosure of the existence of the system of records could reasonably be expected to cause serious damage to national defense or foreign relations; or

"(2) maintained by the Central Intelligence Agency.

"(d) The head of an executive agency or his designee may publish rules exempting systems of records or information contained therein from all or part of the provisions of subsection (b)(1)(H) and (b)(2) through (11) of this section--

"(1) to the extent that he determines that the disclosure of the information could reasonably be expected to cause serious damage to national defense or foreign relations; or

"(2) that are maintained in connection with providing protective services to the President and other individuals; or

"(3) that consist of investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency; or

"(4) that are investigatory files compiled or used for the purpose of determining initial or continuing eligibility or qualification for Federal employment, military service, Federal contracts, or access to classified information; or

"(5) that are authorized by law to be maintained and used only as statistical reporting or research records.

"(e) Each agency shall adopt rules in accordance with section 553 of this title to implement the provisions of this section. Such rules shall define reasonable times, places and requirements for individual identification for making records available to the individual to whom they pertain; procedures for reviewing and making determinations on requests for amendment of records; and other procedures whereby individuals may exercise their rights established by this section. Such rules may establish fees to be charged to individuals for furnishing copies of records, or portions thereof, which shall in no event be greater than the cost to the agency of furnishing such copies. Such rules may also establish procedures for the disclosure to an individual of medical information pertaining to him in cases where the agency determines that such disclosure might be injurious to him.

"(f) (1) Records pertaining to identifiable individuals transferred to the General Services Administration for storage subsequent to the enactment of this section shall, for the purposes thereof, be considered to be maintained by the agency which transferred the records and shall be subject to the provisions of this section. The General Services Administration shall not disclose such records, or any information therein, except to the agency which maintains the records or pursuant to rules established by that agency.

(2) Records pertaining to identifiable individuals

transferred to the General Services Administration for storage prior to enactment of this section shall not be subject to the provisions of this section unless requests are received for release or disclosure of the records or information contained therein. At that time, the records shall be subject to the provisions of this section, as if they were active agency records at the time of the request for disclosure except that this provision shall not apply to records transferred to the General Services Administration more than 100 years prior to enactment of this section.

"(g) The President shall report to Congress before June 30th of each year on an agency-by-agency basis the nature of each system of records and the number of records therein which were exempted from the application of this section pursuant to the provisions of subsections (c) or (d) during the immediately preceding calendar year.

"(h) Any officer or employee of the United States who by virtue of his employment or official position, has possession of or access to information, the disclosure of which is prohibited by this statute, rules or regulations established pursuant thereto, and who knowingly discloses such information in any manner to any person or agency not entitled to receive it shall be subject to a fine of not more than \$5,000.

"(i) Nothing in this section shall be construed to require transfer or similar distribution of any information prohibited or otherwise restricted by other statutes." (Further research

is being conducted to determine whether the provisions of this section could require the release of information which is prohibited by other statutes.)

SEC. 2 The table of sections of Chapter 5 of title 5 United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules; opinions, order, records, and proceedings."

SEC. 3. The amendments made by the Act shall become effective on the one hundred eightieth day following the date of enactment of this Act.